SENATE BILL No. 1464

Introduced by Committee on Governance and Finance (Senators Wolk (Chair), Beall, DeSaulnier, Hernandez, Knight, Liu, and Vidak)

March 13, 2014

An act to amend Sections 62, 170, 201.7, and 439.2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1464, as introduced, Committee on Governance and Finance. Property taxation.

(1) The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, "full cash value" is defined as the assessor's valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. Existing property tax law specifies those circumstances in which the transfer of ownership interests results in a change in ownership of the real property, and provides that certain transfers do not result in a change of ownership.

This bill would make technical, nonsubstantive changes to this provision and would update a cross reference.

(2) Under existing law, a county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors, constitutes the county board of equalization for a county. Existing property tax law specifically authorizes the board of supervisors of any county to create an assessment appeals board to equalize the valuation of taxable property within the county for the purpose of taxation.

Existing property tax law authorizes counties to adopt ordinances that allow assessees whose property was damaged or destroyed to apply for a reassessment of that property, as provided, if certain conditions are met. Existing law authorizes an applicant to appeal the proposed reassessment to the local board of equalization, and requires a board to hear and decide the matter, as prescribed.

This bill would clarify that appeal is made to either the county board of supervisors acting as the county board of equalization, or an assessment appeals board established by the county board of supervisors in accordance with existing law, as applicable.

(3) Existing law authorizes the Department of Parks and Recreation to enter into an operating agreement with a qualified nonprofit organization for specified purposes, and existing property tax law provides that a qualified nonprofit corporation that has entered into an agreement with the Department of Parks and Recreation is deemed to be an agent of the state for purposes of property taxation, and that any state-owned property, including possessory interests in that property, used or possessed by the qualified nonprofit organization, as specified, would be exempt from taxation under the exemption for property owned by the state.

This bill would correct a reference from qualified nonprofit corporation to qualified nonprofit organization.

(4) Existing law authorizes a city, county, or city and county to create historic zones and to contract with the owner of qualified historical properties within these zones to restrict the use of the property for a minimum period of 10 years, and establishes methods for the property tax valuation of any property so restricted during the contract period on a basis that is consistent with its restrictions and uses.

This bill would correct an incorrect reference to a federal agency in these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 62 of the Revenue and Taxation Code is amended to read:

62. Change in ownership shall not include:

(a) (1) Any transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common.

(2) Any transfer between an individual or individuals and a legal entity or between legal entities, such as a cotenancy to a partnership, a partnership to a corporation, or a trust to a cotenancy, that results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

(b) Any transfer for the purpose of perfecting title to the property.

(c) (1) The creation, assignment, termination, or reconveyance of a security interest; or (2) the substitution of a trustee under a security instrument.

(d) Any transfer by the trustor, or by the trustor's spouse or registered domestic partner, or by both, into a trust for so long as (1) the transferor is the present beneficiary of the trust, or (2) the trust is revocable; or any transfer by a trustee of such a trust described in either clause (1) or (2) back to the trustor; or, any creation or termination of a trust in which the trustor retains the reversion and in which the interest of others does not exceed 12 years duration.

(e) Any transfer by an instrument whose terms reserve to the transferor an estate for years or an estate for life. However, the termination of such an estate for years or estate for life shall constitute a change in ownership, except as provided in subdivision (d) and in Section 63.

(f) The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65.

(g) Any transfer of a lessor's interest in taxable real property subject to a lease with a remaining term (including renewal options) of 35 years or more. For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners' exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800) and floating homes subject to taxation pursuant to Section 229, that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(h) Any purchase, redemption, or other transfer of the shares or units of participation of a group trust, ~~pooled fund,~~ common trust fund, *pooled fund,* or other collective investment fund established by a financial institution.

(i) Any transfer of stock or membership certificate in a housing cooperative that was financed under one mortgage, provided that mortgage was insured under Section 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or that housing cooperative was financed or assisted pursuant to Section 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or the housing cooperative was financed by a direct loan from the California Housing Finance Agency, and provided that the regulatory and occupancy agreements were approved by the governmental lender or insurer, and provided that the transfer is to the housing cooperative or to a person or family qualifying for purchase by reason of limited income. Any subsequent transfer from the housing cooperative to a person or family not eligible for state or federal assistance in reduction of monthly carrying charges or interest reduction assistance by reason of the income level of that person or family shall constitute a change of ownership.

(j) Any transfer during the period March 1, 1975, to March 1, 1981, between coowners in any property that was held by them as coowners for all or part of that period, and which was eligible for a homeowner's exemption during the period of the coownership, notwithstanding any other provision of this chapter. Any transferee whose interest was revalued in contravention of the provisions of this subdivision shall obtain a reversal of that revaluation with respect to the 1980–81 assessment year and thereafter, upon application to the county assessor of the county in which the property is located filed on or before March 26, 1982. No refunds shall be made under this subdivision for any assessment year prior to the 1980-81 fiscal year.

(k) Any transfer of property or an interest therein between a corporation sole, a religious corporation, a public benefit corporation, and a holding corporation as defined in Section 23701h holding title for the benefit of any of these corporations, or any combination thereof (including any transfer from one entity to the same type of entity), provided that both the transferee and transferor are regulated by laws, rules, regulations, or canons of the same religious denomination.

(*l*) Any transfer, that would otherwise be a transfer subject to reappraisal under this chapter, between or among the same parties for the purpose of correcting or reforming a deed to express the true intentions of the parties, provided that the original relationship between the grantor and grantee is not changed.

(m) Any intrafamily transfer of an eligible dwelling unit from a parent or parents or legal guardian or guardians to a minor child or children or between or among minor siblings as a result of a court order or judicial decree due to the death of the parent or parents. As used in this subdivision, “eligible dwelling unit” means the dwelling unit that was the principal place of residence of the minor child or children prior to the transfer and remains the principal place of residence of the minor child or children after the transfer.

(n) Any transfer of an eligible dwelling unit, whether by will, devise, or inheritance, from a parent or parents to a child or children, or from a guardian or guardians to a ward or wards, if the child, children, ward, or wards have been disabled, as provided in subdivision ~~(c)~~ *(d)* of Section 12304 of the Welfare and Institutions Code, for at least five years preceding the transfer and if the child, children, ward, or wards have adjusted gross income that, when combined with the adjusted gross income of a spouse or spouses, parent or parents, and child or children, does not exceed twenty thousand dollars ($20,000) in the year in which the transfer occurs. As used in this subdivision, “child” or “ward” includes a minor or an adult. As used in this subdivision, “eligible dwelling unit” means the dwelling unit that was the principal place of residence of the child or children, or ward or wards for at least five years preceding the transfer and remains the principal place of residence of the child or children, or ward or wards after the transfer. Any transferee whose property was reassessed in contravention of the provisions of this subdivision for the 1984–85 assessment year shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than 30 days after the later of either the transferee's receipt of notice of reassessment pursuant to Section 75.31 or the end of the 1984–85 fiscal year.

(o) Any transfer of a possessory interest in tax-exempt real property subject to a sublease with a remaining term, including renewal options, that exceeds half the length of the remaining term of the leasehold, including renewal options.

(p) (1) Commencing on January 1, 2000, any transfer between registered domestic partners, as defined in Section 297 of the Family Code, including, but not limited to:

(A) Transfers to a trustee for the beneficial use of a registered domestic partner, or the surviving registered domestic partner of a deceased transferor, or by a trustee of such a trust to the registered domestic partner of the trustor.

(B) Transfers that take effect upon the death of a registered domestic partner.

(C) Transfers to a registered domestic partner or former registered domestic partner in connection with a property settlement agreement or decree of dissolution of a registered domestic partnership or legal separation.

(D) The creation, transfer, or termination, solely between registered domestic partners, of any coowner's interest.

(E) The distribution of a legal entity's property to a registered domestic partner or former registered domestic partner in exchange for the interest of the registered domestic partner in the legal entity in connection with a property settlement agreement or a decree of dissolution of a registered domestic partnership or legal separation.

(2) Any transferee whose property was reassessed in contravention of the provisions of this subdivision for a transfer occurring between January 1, 2000, and January 1, 2006, shall obtain a reversal of that reassessment upon application to the county assessor of the county in which the property is located. Application by the transferee shall be made to the assessor no later than June 30, 2009. A county may charge a fee for its costs related to the application and reassessment reversal in an amount that does not exceed the actual costs incurred. This paragraph shall be liberally construed to provide the benefits of this subdivision and Article XIII A of the California Constitution to registered domestic partners.

(A) After consultation with the California Assessors' Association, the State Board of Equalization shall prescribe the form for claiming the reassessment reversal described in paragraph (2). The claim form shall be entitled "Claim for Reassessment Reversal for Registered Domestic Partners." The claim shall state on its face that a "certificate of registered domestic partnership" is available upon request from the California Secretary of State.

(B) The information on the claim shall include a description of the property, the parties to the transfer of interest in the property, the date of the transfer of interest in the property, and a statement that the transferee registered domestic partner and the transferor registered domestic partner were, on the date of transfer, in a registered domestic partnership as defined in Section 297 of the Family Code.

(C) The claimant shall declare that the information provided on the form is true, correct, and complete to the best of his or her knowledge and belief.

(D) The claimant shall provide with the completed claim the "Certificate of Registered Domestic Partnership," or photocopy thereof, naming the transferee and transferor as registered domestic partners and reflecting the creation of the registered domestic partnership on a date prior to, or concurrent with, the date of the transfer for which a reassessment reversal is requested.

(E) Any reassessment reversal granted pursuant to a claim shall apply commencing with the lien date of the assessment year, as defined in Section 118, in which the claim is filed. No refunds shall be made under this paragraph for any prior assessment year.

(F) Under any reassessment reversal granted pursuant to that claim, the adjusted full cash value of the subject real property in the assessment year described in subparagraph (E) shall be the adjusted base year value of the subject real property in the assessment year in which the excluded purchase or transfer took place, factored to the assessment year described in subparagraph (E) for both of the following:

(i) Inflation as annually determined in accordance with paragraph (1) of subdivision (a) of Section 51.

(ii) Any subsequent new construction occurring with respect to the subject real property.

SEC. 2. Section 170 of the Revenue and Taxation Code is amended to read:

170. (a) Notwithstanding any ~~provision of~~ *other* law ~~to the contrary~~, the board of ~~supervisors may,~~ *supervisors,* by ordinance,

may provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided ~~herein.~~ *in this section.* The ordinance may also specify that the assessor may initiate the reassessment where the assessor determines that within the preceding 12 months taxable property located in the county was damaged or destroyed.

To be eligible for reassessment the damage or destruction to the property shall have been caused by any of the following:

(1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph, "damage" includes a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity.

(2) A misfortune or calamity.

(3) A misfortune or calamity that, with respect to a possessory interest in land owned by the state or federal government, has caused the permit or other right to enter upon the land to be suspended or restricted. As used in this paragraph, "misfortune or calamity" includes a drought condition such as existed in this state in 1976 and 1977.

The application for reassessment may be filed within the time specified in the ordinance or within 12 months of the misfortune or calamity, whichever is later, by delivering to the assessor a written application requesting reassessment showing the condition and value, if any, of the property immediately after the damage or destruction, and the dollar amount of the damage. The application shall be executed under penalty of perjury, or if executed outside the State of California, verified by affidavit.

An ordinance may be made applicable to a major misfortune or calamity specified in paragraph (1) or to any misfortune or calamity specified in paragraph (2), or to both, as the board of supervisors determines. An ordinance ~~may~~ *shall* not be made applicable to a misfortune or calamity specified in paragraph (3), unless an ordinance making paragraph (2) applicable is operative in the county. The ordinance may specify a period of time within which the ordinance shall be effective, and, if no period of time is specified, it shall remain in effect until repealed.

(b) Upon receiving a proper application, the assessor shall appraise the property and determine separately the full cash value of land, improvements and personalty immediately before and after the damage or destruction. If the sum of the full cash values of the land, improvements and personalty before the damage or destruction exceeds the sum of the values after the damage by ten thousand dollars ($10,000) or more, the assessor shall also separately determine the percentage reductions in value of land, improvements and personalty due to the damage or destruction. The assessor shall reduce the values appearing on the assessment roll by the percentages of damage or destruction computed pursuant to this subdivision, and the taxes due on the property shall be adjusted as provided in subdivision (e). However, the amount of the reduction shall not exceed the actual loss.

(c) (1) As used in this subdivision, "board" means either the county board of supervisors acting as the county board of equalization, or an assessment appeals board established by the county board of supervisors in accordance with Section 1620, as applicable.

~~(c)~~

(2) The assessor shall notify the applicant in writing of the amount of the proposed reassessment. The notice shall state that the applicant may appeal the proposed reassessment to the ~~local~~ board ~~of equalization~~ within six months of the date of mailing the notice. If an appeal is requested within the six-month period, the board shall hear and decide the matter as if the proposed reassessment had been entered on the roll as an assessment made outside the regular assessment period. The decision of the board regarding the damaged value of the property shall be final, provided that a decision of the ~~local~~ board ~~of equalization~~ regarding any reassessment made pursuant to this section shall create no presumption as regards the value of the affected property subsequent to the date of the damage.

~~Those~~

(3) Those reassessed values resulting from reductions in full cash value of amounts, as determined above, shall be forwarded to the auditor by the assessor or the clerk of the ~~local equalization~~ board, as the case may be. The auditor shall enter the reassessed

values on the roll. After being entered on the roll, those reassessed values shall not be subject to review, except by a court of competent jurisdiction.

(d) (1) If no application is made and the assessor determines that within the preceding 12 months a property has suffered damage caused by misfortune or calamity that may qualify the property owner for relief under an ordinance adopted under this section, the assessor shall provide the last known owner of the property with an application for reassessment. The property owner shall file the completed application within 12 months after the occurrence of ~~said~~ *that* damage. Upon receipt of a properly completed, timely filed application, the property shall be reassessed in the same manner as required in subdivision (b).

(2) This subdivision does not apply where the assessor initiated reassessment as provided in subdivision (a) or (*l*).

(e) The tax rate fixed for property on the roll on which the property so reassessed appeared at the time of the misfortune or calamity, shall be applied to the amount of the reassessment as determined in accordance with this section and the assessee shall be liable for: (1) a prorated portion of the taxes that would have been due on the property for the current fiscal year had the misfortune or calamity not occurred, to be determined on the basis of the number of months in the current fiscal year prior to the misfortune or calamity; plus, (2) a proration of the tax due on the property as reassessed in its damaged or destroyed condition, to be determined on the basis of the number of months in the fiscal year after the damage or destruction, including the month in which the damage was incurred. For purposes of applying the preceding calculation in prorating supplemental taxes, the term “fiscal year” means that portion of the tax year used to determine the adjusted amount of taxes due pursuant to subdivision (b) of Section 75.41. If the damage or destruction occurred after January 1 and before the beginning of the next fiscal year, the reassessment shall be utilized to determine the tax liability for the next fiscal year. However, if the property is fully restored during the next fiscal year, taxes due for that year shall be prorated based on the number of months in the year before and after the completion of restoration.

(f) Any tax paid in excess of the total tax due shall be refunded to the taxpayer pursuant to Chapter 5 (commencing with Section 5096) of Part 9, as an erroneously collected tax or by order of the board of supervisors without the necessity of a claim being filed pursuant to Chapter 5.

(g) The assessed value of the property in its damaged condition, as determined pursuant to subdivision (b) compounded annually by the inflation factor specified in subdivision (a) of Section 51, shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value.

If partial reconstruction, restoration, or repair has occurred on any subsequent lien date, the taxable value shall be increased by an amount determined by multiplying the difference between its factored base year value immediately before the calamity and its assessed value in its damaged condition by the percentage of the repair, reconstruction, or restoration completed on that lien date.

(h) (1) When the property is fully repaired, restored, or reconstructed, the assessor shall make an additional assessment or assessments in accordance with subparagraph (A) or (B) upon completion of the repair, restoration, or reconstruction:

(A) If the completion of the repair, restoration, or reconstruction occurs on or after January 1, but on or before May 31, then there shall be two additional assessments. The first additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll. The second additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value to be enrolled on the roll being prepared.

(B) If the completion of the repair, restoration, or reconstruction occurs on or after June 1, but before the succeeding January 1, then the additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll.

(2) On the lien date following completion of the repair, restoration, or reconstruction, the assessor shall enroll the new taxable value of the property as of that lien date.

(3) For purposes of this subdivision, “new taxable value” shall mean the lesser of the property’s (A) full cash value, or (B) factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of Section 70.

(i) The assessor may apply Chapter 3.5 (commencing with Section 75) of Part 0.5 in implementing this section, to the extent that chapter is consistent with this section.

(j) This section applies to all counties, whether operating under a charter or under the general laws of this state.

(k) Any ordinance in effect pursuant to *former* Section 155.1, 155.13, or 155.14 shall remain in effect according to its terms as if that ordinance was adopted pursuant to this section, subject to the limitations of subdivision (b).

(*l*) When the assessor does not have the general authority pursuant to subdivision (a) to initiate reassessments, if no application is made and the assessor determines that within the preceding 12 months a property has suffered damage caused by misfortune or calamity, that may qualify the property owner for relief under an ordinance adopted under this section, the ~~assessor may,~~ *assessor,* with the approval of the board of supervisors, *may* reassess the particular property for which approval was granted as provided in subdivision (b) and notify the last known owner of the property of the reassessment.

SEC. 3. Section 201.7 of the Revenue and Taxation Code is amended to read:

201.7. A qualified nonprofit ~~corporation~~ *organization* that has entered into an agreement with the Department of Parks and Recreation pursuant to subdivision (a) of Section 5080.42 of the Public Resources Code for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system shall be deemed to be an agent of the state for purposes of this division and for no other purpose, and any state-owned property, including possessory interests in that property, used or possessed by the qualified nonprofit organization for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system shall be exempt from taxation under subdivision (a) of Section 3 of Article XIII of the California Constitution.

SEC. 4. Section 439.2 of the Revenue and Taxation Code is amended to read:

439.2. When valuing enforceably restricted historical property, the county assessor shall not consider sales data on similar property, whether or not enforceably restricted, and shall value that restricted historical property by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

(1) Where sufficient rental information is available, the income shall be the fair rent that can be imputed to the restricted historical property being valued based upon rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax. When the restricted historical property being valued is actually encumbered by a lease, any cash rent or its equivalent considered in determining the fair rent of the property shall be the amount for which the property would be expected to rent were the rental payment to be renegotiated in the light of current conditions, including applicable provisions under which the property is enforceably restricted.

(2) Where sufficient rental information is not available, the income shall be that which the restricted historical property being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the property is enforceably restricted.

(3) If the parties to an instrument that enforceably restricts the property stipulate therein an amount that constitutes the minimum annual income to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated.

For purposes of this section, income shall be determined in accordance with rules and regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, that the property can be expected to yield to an owner-operator annually on the average from any use of the property permitted under the terms by which the property is enforceably restricted.

Expenditures shall be any outlay or average annual allocation of money or money's worth that can be fairly charged against the revenue expected to be received during the period used in computing the revenue. Those expenditures to be charged against revenue shall be only those that are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the property, property taxes, corporation income taxes, or corporation franchise taxes based on income.

(b) The capitalization rate to be used in valuing owner-occupied single family dwellings pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than October 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as most recently published by the Federal Housing Finance ~~Board~~ *Agency* as of September 1, rounded to the nearest one-fourth of 1 percent.

(2) A historical property risk component of 4 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(c) The capitalization rate to be used in valuing all other restricted historical property pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component to be determined by the board and announced no later than October 1 of the year preceding the assessment year and that was the yield rate equal to the effective rate on conventional mortgages as determined by the Federal Housing Finance ~~Board~~ *Agency* as of September 1, rounded to the nearest one-fourth of 1 percent.

(2) A historical property risk component of 2 percent.

(3) A component for property taxes that shall be a percentage equal to the estimated total tax rate applicable to the property for the assessment year times the assessment ratio.

(4) A component for amortization of the improvements that shall be a percentage equivalent to the reciprocal of the remaining life.

(d) Unless a party to an instrument that creates an enforceable restriction expressly prohibits the valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

(e) The value of the restricted historical property shall be the quotient of the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b) or (c).

(f) The ratio prescribed in Section 401 shall be applied to the value of the property determined in subdivision (d) to obtain its assessed value.

O